NO. 47612-6-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

ANGELA EVANS,

APPELLANT- PLAINTIFF

v.

TACOMA SCHOOL DISTRICT NO. 10,

RESPONDENT- DEFENDANT

APPEAL FROM PIERCE COUNTY SUPERIOR COURT
CAUSE NO. 14-2-09576-2
HONORABLE ELIZABETH MARTIN

BRIEF OF RESPONDENT TACOMA SCHOOL DISTRICT NO. 10

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I. INTRODUCTION

Respondent Tacoma School District No. 10 (hereinafter the "District") respectfully requests that the Court affirm the Trial Court's orders, which dismissed the Petitioner's (hereinafter "Ms. Evans") claims for seduction of a child/alienation of affections, negligence, or negligent failure to report child abuse pursuant to RCW 26.44.030.

This is not a case of "viable legal theories" or "substantial evidence supporting such theories" as is claimed by Ms. Evans. Rather this is a case wherein Ms. Evans is suing the District, individually, under legal theories that do not permit her to bring such claims against the District. The District owed no duty to Ms. Evans under any of her negligence theories and was not the perpetrator of any claimed seduction of J.M. and it is for this reason that the dismissal of her claims was proper. What Ms. Evans fails to recognize, despite the Trial Court's clear rulings, is that any duty owed by the District under the factual allegations set forth in Ms. Evans' Complaint was a duty owed solely to J.M., who is an adult, is not a party to this action and who has never alleged any type of inappropriate conduct by Mr. Brent. Furthermore, any claimed seduction of J.M., again a theory unsupported by J.M. herself, was perpetrated by Mr. Brent, another non-party, who was clearly acting outside of the course and scope of his employment with the District.

II. COUNTERSTATEMENT OF THE ISSUES FOR REVIEW

1. Whether the Trial Court's dismissal of Ms. Evans' claim for alienation of affections/seduction of a child under CR 12(b)(6) was proper?

    a. Whether the Trial Court was correct in dismissing Ms. Evans' claim for alienation of affections when this claim has been abolished and is no longer recognized as a valid tort claim in this State?

    b. Whether the Trial Court was correct in dismissing Ms. Evans' claim for seduction of a child when it has never been alleged that the District was the perpetrator of a seduction and thus the District is not the proper party against whom to assert such a claim?

    c. Whether the Trial Court was correct in refusing to apply the theory of vicarious liability to Ms. Evans' seduction of a child claim when it is well-established that the doctrine of *respondeat superior* does not apply to intentional acts committed outside of the course and scope of employment and made in furtherance of personal objectives, such as sexual relationships?

2. Whether the Trial Court's dismissal of Ms. Evans' negligence claims under CR 12(b)(6) was proper in light of the fact that the District does not owe Ms. Evans a legal duty under the facts alleged in her Complaint?

3. Whether the Trial Court's summary judgment dismissal of Ms. Evans' claim for negligent failure to report child abuse under RCW 26.44.030 was proper?

    a. Whether the Trial Court was correct in dismissing Ms. Evans' claim when she lacks standing to assert this claim as the District did not owe her a statutory duty because she is not within the class of individuals whom the statute was intended to protect?

b. Whether the Trial Court was correct in dismissing Ms. Evans' claim in light of the fact that the District is not a mandatory reporter under the subject statute?

c. Whether the Trial Court was correct in dismissing Ms. Evans' claim when no District personnel received a credible written or oral report that J.M. was the victim of abuse prior to December of 2012?

III. COUNTERSTATEMENT OF FACTS

As Ms. Evans' appeal addresses claims dismissed by the Trial Court on separate motions under both CR 12(b)(6) and CR 56, it is important to differentiate between the facts alleged in Ms. Evans' Complaint, which were at issue when the Trial Court ruled on the District's CR 12(b)(6) motion that resulted in the Trial Court dismissing her claims for seduction of a child and negligence, and the evidence which was before the Trial Court at the time Ms. Evan's "Negligent Failure to Report Child Abuse under RCW 26.44.030" was dismissed pursuant to CR 56.

A. Factual Allegations Set Forth in Ms. Evans' Complaint in Support of her Claims for Seduction of a Child and Negligence.

Ms. Evans is the mother of a former District student, J.M. *See* CP 3 at ¶4.2. She alleges that her adult daughter, J.M., and a former District employee, Jesse Brent (hereinafter "Mr. Brent"), started a romantic relationship while J.M. was a student. *See Id.* In June of 2013, J.M. graduated from the Science and Math Institute (SAMI). *See Id.* Mr. Brent is a former District employee who worked at SAMI as a Campus Security

Officer. *See* CP 3 at ¶4.4. Neither J.M. nor Mr. Brent is a party in this action. *See* CP 2 at ¶¶3.1-3.2.

Ms. Evans alleges that J.M. told her she and Mr. Brent engaged in a sexual relationship while J.M. was a minor. *See* CP 3-4 at ¶4.4; ¶4.8. However, Ms. Evans did not learn of this alleged relationship until after J.M. reached the age of majority. *See* CP 3 at ¶4.4. After J.M. allegedly told Ms. Evans about the relationship with Mr. Brent, Ms. Evans claims she spoke with Mr. Brent on the telephone and according to Ms. Evans, Mr. Brent expressed remorse for his relationship with J.M. *Id.*

On an unknown date sometime after J.M. reached the age of majority, Ms. Evans also alleges she learned that Mr. Brent exerted influence over J.M. outside of the school setting. *See* CP 4 at ¶4.7; ¶4.10. She states she learned that when J.M. was a minor, she sent Mr. Brent nude photos of herself, and that J.M. and Mr. Brent conceived a child. *See* CP 4 at ¶4.10. Ms. Evans further alleges that Mr. Brent used J.M.'s credit to purchase a car and that Mr. Brent encouraged J.M. to file a police report against her for assault. *See* CP 4 at ¶4.6; ¶4.10. Ms. Evans does not state when these alleged events occurred. *See Id.*

According to the Complaint, Ms. Evans was also told that District staff observed the relationship between J.M. and Mr. Brent. *See* CP 4 at ¶4.9. Approximate dates for when District staff observed J.M. and Mr. Brent or which staff observed them is not provided and it is not stated if these observations occurred while J.M. was a minor or a student in the District. *See Id.*

On September 1, 2013, Ms. Evans met with Mr. Brent at her home. *See* CP 3 at ¶4.5. Notably, J.M. was no longer a student in the District at that time. *See* CP 3 at ¶4.2. Following this meeting, Ms. Evans informed the District of the alleged relationship between J.M. and Mr. Brent. *See* CP 4 at ¶4.6. The District immediately placed Mr. Brent on administrative leave. *See Id.* Ms. Evans does not allege that she had any other interaction with the District outside of this limited communication. *See* CP 3-4.

It must be noted that the District disputes the veracity of the above-stated factual allegations set forth in the Complaint and it does not concede these factual allegations for any purpose other than responding to this portion of Ms. Evans' appeal.

B. Facts Before the Trial Court on the District's Motion for Summary Judgment that are Pertinent to Ms. Evans' Claim for "Negligent Failure to Report Child Abuse Pursuant to RCW 26.44.030."

Ms. Evans' daughter, J.M., turned 18 on December 24, 2012. *See* CP 154. Ms. Evans contends that in or around late-August of 2013, she learned her daughter was in a relationship with a District classified employee assigned to SAMI, Jesse Brent. *See* CP 155-56. Ms. Evans claims that prior to that time, she did not know who Mr. Brent was or that he was a District employee. *See Id.*

During the time period in question, wherein both Mr. Brent and J.M. were at SAMI, there were no staff members who observed any behavior by

Mr. Brent that led them to believe that he was engaged in an inappropriate relationship with J.M., or any other student. Former SAMI counselor Paul McGrath never saw Mr. Brent engaging in any conduct with any student, let alone with J.M., that struck him as being inappropriate in nature. *See* CP 386-88. Similarly, SAMI Co-Director Kristin Tinder similarly failed to ever observe Mr. Brent ever singling out any student, including J.M. *See* CP 392-93. While teachers had expressed concern with Mr. Brent spending too much time in their classrooms and socializing with students in general, Ms. Tinder never had any concerns about him singling out particular female students, including J.M., based upon her observations or the reports she received. *See Id.* In addition, SAMI teacher Carol Brouillette recalls that the only thing she observed Mr. Brent doing was "hanging out in the back and talking to students and being in the way." CP 397; *see also* CP 398-99. This general socializing with students, including students other than J.M., was not unique to her classroom, and by logical extension, unique to any one student. *See* CP 397. Further, Ms. Brouillette never felt his relationship with students was dangerous, only informal and unprofessional. *See* CP 399.

On September 1, 2013, nearly three (3) months after J.M. graduated from SAMI and nearly nine (9) months after J.M. turned eighteen years of age, Ms. Evans sent an email to SAMI Assistant Principal/Co-Director

Kristin Tinder stating: "This involves an illegal relationship between my daughter when she was 17 by your security guard Jesse Brent. I have documentation and will await your call." CP 163. Ms. Evans admits that this email was the first time she had ever communicated with anyone at the District about Mr. Brent. *See* CP 157-58. The following morning, Ms. Evans sent Ms. Tinder another email, stating "It was a misunderstanding." CP 165. To clarify what seemed to be two vastly conflicting messages sent by Ms. Evans within a 24-hour time period, Ms. Tinder asked Ms. Evans if there was any inappropriate conduct between Mr. Brent and J.M. that she (Ms. Evans) was aware of. *See* CP 167. Ms. Evans responded, confirming that she was rescinding her report after speaking with Mr. Brent, stating "I feel at this point there was no inappropriate relationship." CP 169. At that time, Ms. Tinder responded, thanking Ms. Evans for clarifying that there was no issue regarding any inappropriate conduct involving J.M. and Mr. Brent. *See* CP 171. On September 4, 2013, Ms. Evans again wrote to Ms. Tinder and shared that she had also reported the matter to law enforcement over the weekend and had similarly advised law enforcement that there was no need to conduct any further investigation beyond what had been done between the time of her initial report and the time that she rescinded her accusations. *See* CP 173. Ms. Evans followed-up on the above

correspondence by sending a short letter, dated September 2, 2013, to both the Tacoma Police Department and the District, stating:

> To whom it may concern,
>
> I Angela Evans referencing police report case number 13-2440682 (information report) filed on September 1st 2013, involving Jesse Brent and my daughter [J.M.]. I have investigated the incident and feel confident that nothing inappropriate transpired between Mr. Brent and my daughter at any time.
>
> There is no reason to proceed with any further investigation of this matter.

CP 175.

At this time, there has been no determination that J.M. and Mr. Brent were ever involved in an inappropriate relationship while J.M. was a student at SAMI. Law enforcement, after conducting the initial investigation into Ms. Evans' allegations, did not pursue criminal charges against Mr. Brent. Furthermore, as can be seen through a review of the Clerk's Papers, at no time has J.M. ever alleged that she was ever involved in any type of an inappropriate relationship with Mr. Brent.

IV. ARGUMENT

A. Standard of Review.

Ms. Evans' appeal challenges the legal grounds for rulings set forth in two separate orders from the Trial Court. First, Ms. Evans contends the Court erred in dismissing her seduction of a child claim and negligence

claims pursuant to CR 12(b)(6). In addition, she contends the Trial Court erred in granting the District's motion for summary judgment dismissing her claim for the "negligent failure to report child abuse pursuant to RCW 26.44.030."

"A trial court's ruling to dismiss a claim under 12(b)(6) is reviewed de novo." *Kinney v. Cook*, 159 Wn. 2d 837, 842, 154 P. 3d 206 (2007) (citing *Tenore v. AT&T Wireless Servs.*, 136 Wn. 2d 322, 329-30, 962 P. 2d 104 (1998)). Dismissal under CR 12(b)(6) "is warranted...if the court concludes beyond a reasonable doubt, the plaintiff cannot prove 'any set of facts which would justify recovery.'" *Kinney*, 159 Wn. 2d at 842.

The review of a trial court's granting of summary judgment is also a de novo review. *See Beggs v. Dep't of Soc. & Health Servs.*, 171 Wn. 2d 69, 75, 247 P. 3d 421 (2011).. Civil Rule 56 provides that a motion for summary judgment "shall be rendered forthwith when the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." CR 56(c). To overcome a motion for summary judgment, the non-moving party must set forth specific facts, and must do more than express opinions or make conclusory statements, showing that there is a genuine issue for trial or must provide facts sufficient to make a prima facie case. *See*

Francom v. Costco Wholesale Corp., 98 Wn. App. 845, 852, 991 P. 2d 1182 (2000); *Young v. Key Pharmaceuticals, Inc.*, 112 Wn. 2d 216, 225, 770 P. 2d 182 (1989).

As will be set forth below, a de novo review of the Trial Court's rulings shows that the Trial Court did not commit reversible error in dismissing the claims that are the subject of this appeal.

B. The Trial Court's dismissal of Ms. Evans' claim for alienation of affections/seduction of a child under CR 12(b)(6) was proper.

Ms. Evans contends the Trial Court committed reversible error by dismissing her statutory seduction of a child claim and common law alienation of affections claim. This position is without merit as there are no alleged facts, or even presumed facts, consistent with her Complaint that would entitle Ms. Evans to relief under these legal theories, one of which has been expressly abolished under Washington law.

1. The common law claim for alienation of affections has been abolished and is no longer recognized as a valid tort claim in this State.

First and foremost, the tort of alienation of affections, which Ms. Evans did not plead in her Complaint but which was asserted for the first time in her opposition to the District's motion to dismiss, was abolished in Washington in 1976 and therefore it is not a valid legal claim. *See Lien v. Barnett*, 58 Wn. App. 680, 683-85, 794 P. 2d 865 (1990); *Lund v. Caple*,

100 Wn. 2d 739, 744-47 (1984); *Wyman v. Wallace*, 15 Wn. App. 395, 395-401 (1976). As the tort of alienation of affections is no longer a recognized cause of action, the Trial Court properly dismissed this claim as there are no facts, pled or not, that would justify recovery.

It is unclear from Ms. Evans' brief, but it may be that Ms. Evans is arguing that this Court should reverse the abolishment of this claim. Even if the Court was inclined to reverse the abolishment, Ms. Evans' Complaint did not set forth sufficient factual allegations to prove the elements of the claim. There are no factual allegations stated therein, or even hypothetical facts, which point to any alleged malicious interference with Ms. Evans' relationship with J.M. that were undertaken by the District, let alone any acts done with the purpose of causing a loss of affection between Ms. Evans and J.M. *See Strode v. Gleason*, 9 Wn. App. 13, 510 P. 2d 50 (1973); CP 1-6.

Ms. Evans cites to the case of *Tyner v. DSHS*, 141 Wn. 2d 68, 1 P. 3d 1148 (2000) for the proposition that Washington courts have implicitly lifted the abolishment of a common law claim for alienation of affections, recognizing a parental cause of action against a party who damages the parent/child relationship. Such a reading of *Tyner* is entirely incorrect and misplaced. The case of *Tyner v. DSHS* arises out of a CPS investigation into allegations of parental child abuse. *See Tyner*, 141 Wn. 2d at 71.

During the pendency of the CPS investigation, Mr. Tyner was separated from his children for a period of approximately 17 weeks. *See Id.* at 71-76. In issuing its decision, the court was not asked to determine if there is a parental cause of action for alienation of affections. Rather, it was asked to determine whether the State owed a duty of care to parents when conducting investigations pursuant to RCW 26.44.050. *See Id.* at 76-77. The court, in examining RCW 26.44.050, ultimately held that under that specific statute "CPS owes a duty of care to a child's parents...when investigating allegations of child abuse." *Id.* at 82. Nowhere in *Tyner* does the court go so far as to issue a blanket ruling that parents may sue for damages to a parent/child relationship, as is suggested by Ms. Evans.

2. Ms. Evans has never alleged that the District was the perpetrator of any alleged seduction and thus the District is not the proper party against whom to assert a claim for seduction of a child.

As for Ms. Evans' seduction of a child claim, the District does not contend that RCW 4.24.020 has ever been held invalid or unconstitutional as is suggested in Ms. Evans' briefing. Rather, it is apparent through the facts alleged in Ms. Evans' Complaint that J.M. is **not** a minor child, as is required for a parent or guardian to assert a cause of action under RCW 4.24.020. *See* RCW 4.24.020. Nowhere in the plain language of this

statute does it state that a parent may maintain a claim for seduction of an adult child. *See Id.* For this reason, Ms. Evans' claim lacks merit.

Further, and of equal, if not more importance, the factual allegations set forth in Ms. Evans' Complaint do not allege, or demonstrate, that the District, as opposed to Mr. Brent, is liable for the alleged "seduction" of J.M. Black's Law Dictionary defines "seduction" as:

> "[t]he offense that occurs when a man entices a woman of previously chaste character to have unlawful intercourse with him by means of persuasion, solicitation, promises, or bribes, or other means not involving force."

Black's Law Dictionary 1093 (7th ed. 2000). This definition clearly illustrates who the proper defendant is for a claim brought under RCW 4.24.020, that being the man who entices the woman (or vice versa). The District is simply not capable of committing the act of seduction. This distinction was recognized in the highly illustrative and factually on-point case of *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 66 (2007). In *Doe*, the trial court held that parents could not recover from a school district on a seduction claim arising out of a relationship between their minor daughter and a substitute teacher because the school district was not the perpetrator of the seduction. *See Doe*, 375 S.C. at 66. Upholding the lower court's dismissal of the claim, the court opined that the defendant to a

seduction action **must** be the perpetrator of the seduction and that the school district was clearly not the perpetrator of the seduction. *Id.* at 69.

Ms. Evans appears to be arguing that the *Doe v. Greenville County Sch. Dist.* ruling should be entirely disregarded as it is not a decision from a Washington court. This position is without merit as while out-of-state rulings are not binding precedent, they are often cited to in appellate court decisions and are highly illustrative when case law within the jurisdiction is lacking.

The only case that Ms. Evans cites to in support of her argument that her seduction of a child claim should not have been dismissed is the entirely irrelevant case of *D.L.S. v. Maybin*, 130 Wn. App. 94, 121 P. 3d 1210 (2005). A review of the opinion shows that this case does not touch upon the legal requirements of the claim under the statute in question; rather, it only mentions RCW 4.24.020 in a footnote listing the claims asserted by the father against the various defendants. *See D.L.S.*, 130 Wn. App. at 97, n.1. Nowhere does this opinion discuss the legal validity of a claim for seduction of a child when such a claim is brought against a myriad of defendants, including the seducer, and therefore it is of no import to the question presently before this Court.

3. The doctrine of *respondeat superior* does not apply to the intentional acts of an employee committed outside of the course and scope of employment and made in furtherance of the employee's personal objectives.

Ms. Evans argues that the Trial Court erred when it refused to apply the doctrine of *respondeat superior* and find the District vicariously liable for Mr. Brent's alleged seductive actions. This argument is entirely unsupported by any legal precedent. Rather, an examination of the case law illustrates that under the facts of this case, the Trial Court was correct in holding that the District cannot be held liable for the alleged seductive actions of Mr. Brent.

In claiming the Trial Court committed reversible error in dismissing her claim, Ms. Evans disregards the fact that her Complaint fails to assert any alleged actions undertaken by Mr. Brent that were done in furtherance of the District's interests. Rather, all of the alleged acts stated in Ms. Evans' Complaint on which she bases her seduction of a child claim are clearly intentional acts undertaken with the sole purpose of gratifying Mr. Brent's personal objectives and desires, including his own sexual gratification. This necessarily bars the application of the theory of *vicarious liability.*

Ms. Evans appears to be arguing that the Trial Court applied too stringent a standard in dismissing her claim, claiming it should have been a question of fact left for a jury. However, this argument lacks merit as it fails

to acknowledge the series of Washington cases that support the Trial Court's ruling by clearly holding that an employer, including a school district, is not liable for intentional acts of an employee undertaken for personal sexual gratification when the acts do not further the employer's interests. *See Niece v. Elmview Group Home*, 131 Wn. 2d 39, 55 (1997) (holding that a sexual relationship between a student and teacher is not within the scope of a teacher's employment); *Bratton v. Calkins,* 73 Wn. App. 492, 501, 870 P. 2d 981 (1994) (holding a group home could not be held vicariously liable for an employee's sexual assault of a resident); *Thompson v. Everett Clinic,* 71 Wn. App. 548, 860, P. 2d 1054 (1993) (holding that a doctor's tortious sexual assault of a patient was not attributable to the clinic that employed him).

In the case of *Bratton v. Calkins,* another factually on-point case involving a sexual relationship between a student and her teacher, the court found that "a sexual relationship between a teacher and a student does not benefit the employer and is not within the teacher's scope of employment...A personally motivated sexual relationship between a teacher and a student does not further the employer's interest." *Bratton,* 73 Wn. App. at 500-01. The opinion goes on to state that "[e]ven if [the] employment provided the opportunity for the wrongful acts, [the]

intentional tortious actions should not be attributable to the school district." *Id.* at 501.

The same reasoning supports the Trial Court's dismissal of Ms. Evans' claim in this matter. Regardless of whether or not Mr. Brent's position with the District provided him with the opportunity to interact with Ms. Evans' daughter, the District cannot be held liable for the claimed clearly intentional and personally motivated acts of Mr. Brent, which Ms. Evans claims amounted to the seduction of J.M.

C. The Trial Court's dismissal of Ms. Evans' negligence claims under CR 12(b)(6) was proper in light of the fact that the District does not owe Ms. Evans a legal duty under the facts alleged in her Complaint.

Ms. Evans contends the Trial Court committed reversible error by dismissing her claims for negligent hiring, training, supervision and retention pursuant to CR 12(b)(6) as even if Mr. Brent's conduct fell outside of the scope of his employment, she contends the District owed her, as opposed to or in addition to her daughter J.M., a duty to exercise reasonable care in the hiring, retention and supervision of Mr. Brent. In making this argument, Ms. Evans cites to a number of cases addressing similar negligence claims made against an employer arising out of an employee's alleged actions. However, she fails to acknowledge the major difference between those cases and her own; that being that the plaintiffs in the cases

she relies upon were the persons actually harmed by an employee's actions. This is a key distinction for the purposes of Ms. Evans' appeal.

What Ms. Evans fails to recognize is that there is a fatal flaw in her negligence claims against the District which makes any evidence she offers in support of her claims of negligent hiring, supervision or retention wholly irrelevant. That fatal flaw being that the District owed no duty to her, as opposed to her now-adult daughter, J.M.

The essential elements of a negligence claim are: (1) the existence of a duty owed to the **complaining party**; (2) a breach of that duty; (3) a resulting injury; and (4) a proximate cause between the breach and injury. *See Christen v. Lee,* 113 Wn. 2d 479, 780 P. 2d 1307 (1989). The District does not dispute that school districts have a duty to use reasonable care to protect **students** from reasonably foreseeable harms while they are in the school district's custody. *See Peck v. Siau,* 65 Wn. 2d 285, 292, 827 P. 2d 1108 (1992). Included in this duty is a duty to use reasonable care in the hiring, supervision and retention of employees. *See Id.* at 292-94. However, these duties **do not** extend to a student's parents. *See Jachetta v. Warden Joint Consolidated School District,* 142 Wn. App. 819, 176 P. 2d 545 (2008). In addition, as was discussed previously, a school district may not be held liable under the theory of vicarious liability for the intentional

acts of an employee which do not further the school district's interests. *See Bratton v. Calkins*, 73 Wn. App. 492, 501, 870 P. 2d 981 (1994).

The court's holding in the case of *Jachetta v. Warden Joint Consolidated School District* illustrates why the Trial Court's dismissal of Ms. Evans' negligence claims was proper. In *Jachetta*, the parents of a student brought a negligence action against the school district alleging the district was negligent in responding to a threat made to their son. *See Jachetta*, 142 Wn. App. at 821. The court ultimately found that while the school district had a duty to protect the Jachettas' son from reasonably anticipated dangers, i.e. the threat, Mr. and Mrs. Jachetta were not students and thus the school district had **no duty** to protect them. *See Id.* at 824.

Similarly, in this case, while the District had a duty to protect J.M. and other pupils from reasonably anticipated dangers, this duty **did not** extend to Ms. Evans. Regardless of what she pled in Paragraph 4.9 of her Complaint, or what she may hypothetically be able to show through discovery or that was submitted to the Trial Court in later briefing, and even assuming there was some evidence that the District breached a duty owed to J.M. based upon the facts alleged in Ms. Evans' Complaint (which the District strongly maintains it did not), such a duty would have been owed to J.M., **not** to Ms. Evans. Accordingly, as no legal duty was owed to Ms. Evans by the District under the facts of this Complaint, there is no need to

address whether sufficient facts were pled by Ms. Evans to support the additional elements of her negligence claims.

D. The Trial Court Did Not Commit Reversible Error by Ordering the Summary Judgment Dismissal of Ms. Evans' Claim for "Negligent Failure to Report Child Abuse Pursuant to RCW 26.44.030."

Ms. Evans contends the Trial Court erred in granting the District's Motion for Summary Judgment and dismissing her claim for "negligent failure to report child abuse pursuant to RCW 26.44.030" arguing that the statute contains an implied cause of action for the parent of a child abuse victim. However, a review of the relevant statutes, case law, and evidence shows that this argument is without merit and the Trial Court was correct in dismissing this claim.

1. Ms. Evans is not within the class of individuals intended to be protected by RCW 26.44.030.

Ms. Evans asserted her claim against the District for the "negligent failure to report child abuse under RCW 26.44.030" on behalf of herself, as the parent of her adult daughter, J.M. *See* CP 1-6. In assessing the validity of the Trial Court's dismissal of this claim, it is important to note that at no time has Ms. Evans alleged she is bringing this claim on behalf of a minor child. Rather, she alleges the District breached some separate duty owed to **her**, as opposed to J.M. (who is now an adult) under RCW 26.44.030.

The District does not dispute that a failure to meet the mandatory reporting duty under RCW 26.44.030 is enforceable in a civil suit through an implied cause of action brought by the minor child abuse victim against the mandatory reporter. *See Beggs v. Dep't of Soc. & Health Servs.*, 171 Wn.2d 69, 77-78 (2011); *Doe v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 141 Wn. App. 407, 422, 167 P.3d 1193 (2007). What the District strongly disputes is Ms. Evans' position that the statute was also intended to protect the parent of the child and therefore the parent has a separate cause of action. A review of the statute and case law illustrates that the only proper plaintiff in such an action is the victim that the statute is intended to protect, **the minor child**. *See State v. Warner*, 125 Wn. 2d 876, 891, 889 P. 2d 479 (1995); *See also Beggs*, 171 Wn. 2d at 77; *Doe*, 141 Wn. App. at 422.

In arguing her position, Ms. Evans cites primarily to the cases of *Beggs v. DSHS*, 171 Wn. 2d 69, 247 P. 3d 421 (2011) and *Tyner v. DSHS*, 141 Wn. 2d 68, 1 P. 3d 1148 (2000) for the proposition that the legislature intended for parents of child abuse victims to be amongst the class of individuals intended to be covered by the protections set forth by RCW 26.44 *et seq*. The primary issue with Ms. Evans' reliance on these cases is that they are so factually distinguishable that their holdings and the

legal reasoning contained therein do not extend to the present case and its unique facts.

As stated previously, the District does not dispute that in the case of *Beggs v. DSHS* the court recognized an implicit cause of action against a mandatory reporter under RCW 26.44.030. *See Beggs*, 171 Wn. 2d at 77. However, for Ms. Evans to state that the Trial Court's dismissal of her claim was inappropriate under the ruling of *Beggs* is entirely misguided. The court's ruling, in holding that the adult plaintiff, **bringing suit on behalf of the minor child**, could proceed on such a cause of action focused on the legislature's intent to protect the actual victim of the child abuse and nowhere did the court indicate that a parent of a victim of child abuse could bring their own claim under this specific statute. *See Id.* at 77-79.

A similarly impactful factual distinction can also be found in the case of *Tyner v. DSHS*, where the court was asked to examine whether a parent who was the subject of a DSHS investigation could bring a claim for negligent investigation of child abuse against the State pursuant to RCW 26.44.050 (**not** RCW 26.44.030) after being separated from his children for a prolonged period of time while an investigation was conducted into concerns he had abused his children. *See Tyner*, 141 Wn.2d at 76. In ruling that a parent held an implicit cause of action for negligent investigation under RCW 26.44.050, the court noted that the specific statute

in question, **not** 26.44 *et seq.* as a whole, was designed to "protect both children and family members; children are protected from potential abuse and needless separation from their families and family members are protected from unwanted separation from their children." *Id.* at 79. The reasoning that motivated the court's decision in *Tyner* simply does not apply to Ms. Evans' claim as the reporting requirements of RCW 26.44.030 have nothing to do with separating a child from their parent and at no time was she separated from her minor child as a result of some action by the District or its employees. *See* RCW 26.44.030.

Ms. Evans is simply unable to overcome the fact that the statute at issue, RCW 26.44.030, and the case law interpreting its application, do not state or even imply that anyone outside the class of persons the statute was intended to protect – the victims of child abuse – has the right to assert a claim under this statute. *Id.* There is simply no evidence that would warrant extending a cause of action to the parents of minor child abuse victims under this statute.

2. In the alternative, the District is not a "mandatory reporter" under RCW 26.44.030.

Revised Code of Washington RCW 26.44.030 imposes a duty upon a number of classes of individuals, including "professional school personnel," to report all reasonable beliefs that a child is being abused or

neglected. *See* RCW 26.44.030(1)(a). "Professional school personnel" is defined as including the following individuals, "teachers, counselors, administrators, child care facility personnel, and school nurses." RCW 26.44.020(19).

The District, the only named Defendant in this action, is not "professional school personnel" as defined by this statute. While its employees may constitute "professional school personnel," Ms. Evans has failed to name any employee as a co-defendant. *See* CP 1-6. Furthermore, there is no case law stating that an overreaching interpretation of RCW 26.44.030 should be adopted whereby an employer can be held vicariously liable for a mandatory reporter's failure to make a report under RCW 26.44.030. Such a suggestion is simply without support. In fact, the case of *Beggs v. DSHS* is illustrative as to this point in that the implied claim under RCW 26.44.030 was discussed only in the context of it being brought against the actual mandatory reporter, as intended by the statutory language, as opposed to the mandatory reporter's employer. *See Beggs*, 171 Wn. 2d 69, 72-78.

3. In the alternative, there was no duty to report child abuse under RCW 26.44.030 based upon the information known by District employees prior to J.M.'s 18th birthday.

Even if Ms. Evans had legal standing to assert a claim for the negligent failure to report child abuse under RCW 26.44.030, which she does not, she is not able to establish the requisite elements of such a claim.

Revised Code of Washington 26.44.030, provides that a report must be made when there is **reasonable cause** to believe a **child under the age of 18** has suffered abuse or neglect. *See* RCW 26.44.030; *See also* RCW 26.44.020(2). In addition, the mandatory reporter must have received "a credible written or oral report alleging abuse" to trigger this duty. RCW 26.44.030(1)(b)(iii). Further, as is applicable in the case, the statute specifically states:

> The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

RCW 26.44.030(2).

In arguing that the Trial Court erred in dismissing her claim, Ms. Evans claims that District staff members observed Mr. Brent engaging in conduct which may have constituted "unacceptable conduct" under the

District's "Maintaining Professional Staff/Student Boundaries" policy when he was seen socializing with students during class time, and that those observations triggered a duty to report under RCW 26.44.030. Again, it is important to note that at no time has J.M., the theoretical target of Mr. Brent's "unacceptable conduct," ever alleged, claimed or stated that Mr. Brent ever, at any time, acted in a manner which she felt was inappropriate.

The problem with Ms. Evans' argument is that it disregards the important, and clear, distinction between conduct that triggers a duty to make a mandatory report under RCW 26.44.030 and conduct that constitutes "unacceptable conduct" and/or a boundary invasion under District Regulation 5243R. While all staff conduct that gives rise to reasonable cause to believe a child is being abused under RCW 26.44.030 constitutes "unacceptable conduct" under District Regulation 5243R, the inverse cannot be said to be true. There is certainly conduct included on the list of "unacceptable conduct" that does not constitute abuse, nor would the act of witnessing some of the listed conduct in District Regulation 5243R give a staff member reasonable cause to believe a minor student was being abused. The language of District Regulation 5243R itself even addresses this clear and important distinction:

> Staff members who become aware of conduct by a staff member...that may constitute a boundary invasion are required to promptly notify the building principal or the

> supervisor of the employee...suspected of engaging in inappropriate conduct.
>
> ***All school personnel who have reasonable cause to believe that a student has experienced sexual abuse by a staff member...are required to make a report to Child Protective Services or law enforcement pursuant to Policy 3421, Regulation 3421, and RCW 26.44. Reporting suspected abuse to the building principal or supervisor does not relieve school personnel from their reporting responsibilities and timelines.***

CP 231-33.

It is simply the case that boundary invasion behaviors under District policy may include conduct, such as socializing with students, that does not meet the stringent definition of abuse set forth by RCW 26.44, *et seq.* "***Abuse or neglect***" for purposes of interpreting RCW 26.44.30 is defined as ***"sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.010."*** RCW 26.44.020(1) (emphasis added). Ms. Evan's claim that Mr. Brent's socializing, in a peer-like manner, with students of both sexes, not even necessarily J.M., in various classrooms during school hours, where teachers were present, constituted "abuse or neglect" of J.M., or any other minor child as defined by RCW 26.44.020(1), is simply preposterous.

Despite introducing numerous pages of irrelevant and distracting factual assertions and quotes from various depositions, declarations, and

documents, Ms. Evans failed to provide the Trial Court with any evidence showing that any District staff member had reasonable cause to believe J.M. was being sexually abused or had been sexually abused by Mr. Brent prior to turning 18 years of age, or even prior to the time of her graduation or that there was any inappropriate relationship which occurred between J.M. and Mr. Brent, something that J.M. has not even alleged or acknowledged.

Former SAMI counselor Paul McGrath is oft-quoted by Ms. Evans. However, a review of his deposition testimony shows that Mr. McGrath did not have reasonable cause to believe that J.M., or any other minor student, was being abused by Mr. Brent. *See* CP 385. In fact, during his time on campus, Mr. McGrath never saw Mr. Brent engaging in any conduct with any student, let alone with J.M., which struck him as being inappropriate in nature. *See* CP 386-88.

Similarly, SAMI Co-Director Kristin Tinder similarly failed to ever observe Mr. Brent ever singling out any student, including J.M. *See* CP 392-93. While teachers had expressed concern with Mr. Brent spending too much time in their classrooms and socializing with students in general, Ms. Tinder never had any concerns about him singling out particular female students, including J.M., based upon her observations or the reports she received. *See Id.*

In addition, despite Ms. Evans' efforts to take SAMI teacher Carol Brouillette's testimony out of context, the evidence shows that Ms. Brouillette, like all other District staff, never had reasonable cause to believe J.M. was being abused by Mr. Brent prior to the time she turned 18 years of age. The only conduct Ms. Brouillette observed, which Ms. Evans contends was conduct that triggered a mandatory reporting duty, was Mr. Brent "hanging out in the back and talking to students and being in the way." CP 397; *see also* CP 398-99. This general socializing with students, including students other than J.M., was not unique to her classroom, and by logical extension, unique to any one student. *See* CP 397. Further, Ms. Brouillette never felt his relationship with students was dangerous, only informal and unprofessional. *See* CP 399.

Ms. Evans also cites to a March 7, 2014, letter to Mr. Brent (authored by Gayle Elijah nearly one year after J.M. graduated from SAMI and more than one year after she turned 18) discussing the numerous text messages that were found to exist following a police investigation in or around the Fall of 2013. *See* CP 235-272. These distracting recitations from documents authored after J.M. turned 18 do not change the fact that Ms. Evans cannot establish that anyone was aware of the text messages or the timing of the text messages prior to J.M. turning 18, or even prior to J.M. graduating from high school. Instead, the evidence shows that District

staff did not have any knowledge of text messaging between Mr. Brent and J.M., and had District staff members had knowledge of that type of conduct, it certainly would have been reported.

By the time Ms. Evans contacted the District in September of 2013 to make a report of an alleged inappropriate relationship between J.M. and Mr. Brent, J.M. was nearly nineteen years old and had already graduated. *See* CP 155-56; 163. At that time, J.M. was no longer a "child" under RCW 26.44.030 and accordingly, there was no longer a mandatory duty to report any alleged abuse. *See* RCW 26.44.030(2). Furthermore, at that time, Ms. Evans made it clear to the District that she had already reported the allegations to law enforcement. *See* CP 173; 175. Thus any report made to CPS and/or law enforcement in September of 2013, after J.M. had turned eighteen, would have been duplicative of the report she had already made to law enforcement and would have warranted the same results. Lastly, Ms. Evans nearly immediately recanted her allegations against Mr. Brent in her September 2, 2013, email and confirmed that she no longer believed that anything inappropriate had transpired while J.M. was a minor, thus rendering her report of abuse to be no longer credible. Thus, any duty to report under RCW 26.44.030 ceased to exist at that time.

Even Ms. Evans' self-serving assertions that someone knew that J.M. was a victim of abuse prior to turning eighteen but failed to report it

are entirely unsupported. She herself cannot identify a single District employee who she thinks had reasonable cause to believe that J.M., prior to turning eighteen years of age or even prior to graduating in June of 2013, was the victim of abuse or neglect. *See* CP 159-60.

V. CONCLUSION

For the reasons set forth above, the Trial Court did not err in dismissing Ms. Evans' claims for seduction of a child/alienation of affections, negligence or negligent failure to report child abuse pursuant to RCW 26.44.030.

Accordingly, the District respectfully requests that this Court affirm both the Trial Court's order granting the District's Motion to Dismiss Pursuant to CR 12(b)(6) which dismissed her claims of seduction of a child/alienation of affections and negligence, and the Trial Court's order granting the District's Motion for Summary Judgment dismissing Ms. Evans' claim for the negligent failure to report child abuse pursuant to RCW 26.44.030.

DATED this 9th day of November, 2015.

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CERTIFICATE OF SERVICE

I, Karen L. Yun, hereby certify that on this 17th day of November, 2015, I served the foregoing with the Court of Appeals **VIA LEGAL MESSENGER** to 950 Broadway, Ste 300, Tacoma, WA 98402 and caused the same to be served upon each and every attorney of record as noted below:

Via Legal Messenger and Electronic Mail

Mr. Thaddeus P. Martin
Law Office of Thaddeus P. Martin
4928 - 109th Street SW
Lakewood, WA 98499

I certify under penalty of perjury under the laws of the State of Washington that the above is correct and true.

Executed in Seattle, Washington, on this 17th day of November, 2015.

Karen Yun

Karen L. Yun
Legal Assistant